

Parties listed on signature page.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

TECHNOLOGY PROPERTIES LIMITED LLC and MCM PORTFOLIO LLC,	)	Case Number: C 14-03640-CW
Plaintiffs,	)	FURTHER JOINT CASE MANAGEMENT STATEMENT and [PROPOSED] ORDER
vs.	)	Date: June 18, 2015
CANON, INC., et al.,	)	Time: 2:00 pm
Defendants.	)	Courtroom: 2, 4 th Floor
TECHNOLOGY PROPERTIES LIMITED LLC and MCM PORTFOLIO LLC,	)	Case Number: C 14-03643-CW
Plaintiffs,	)	FURTHER JOINT CASE MANAGEMENT STATEMENT and [PROPOSED] ORDER
vs.	)	Date: June 18, 2015
HEWLETT-PACKARD COMPANY,	)	Time: 2:00 pm
Defendant.	)	Courtroom: 2, 4 th Floor
TECHNOLOGY PROPERTIES LIMITED LLC and MCM PORTFOLIO LLC,	)	Case Number: C 14-03645-CW
Plaintiffs,	)	FURTHER JOINT CASE MANAGEMENT STATEMENT and [PROPOSED] ORDER
vs.	)	Date: June 18, 2015
NEWEGG INC., et al.,	)	Time: 2:00 pm
Defendants.	)	Courtroom: 2, 4 th Floor
TECHNOLOGY PROPERTIES LIMITED LLC and MCM PORTFOLIO LLC,	)	Case Number: C 14-03646-CW
Plaintiffs,	)	FURTHER JOINT CASE MANAGEMENT STATEMENT and [PROPOSED] ORDER
vs.	)	Date: June 18, 2015
SEIKO EPSON CORPORATION, et al.,	)	Time: 2:00 pm
Defendants.	)	Courtroom: 2, 4 th Floor

Pursuant to the Court's April 16, 2015 Notice (Doc. 293 in Case No. 4:14-cv-03640-CW) and the Court's November 19, 2014 Minute Order and Case Management Order (Doc. 261 in Case No. 4:14-cv-03640-CW), Plaintiffs Technology Properties Limited LLC and MCM Portfolio LLC ("Plaintiffs") and Defendants Canon Inc., Canon U.S.A., Inc., Hewlett-Packard Company, Newegg Inc., Rosewill Inc., Seiko Epson Corporation, and Epson America, Inc. ("Defendants") (together, "the parties") jointly file this Further Joint Case Management Statement in the above-captioned cases. For the convenience of the Court, the parties have not repeated the discussion of Jurisdiction and Service, Facts, Legal Issues, Amendment of Pleadings, Evidence Preservation, Disclosures, Class Actions, Related Cases, Relief, Consent to Magistrate Judge For All Purposes, Other References, Expedited Trial Procedure, Disclosure of Non-Party Interested Entities and Persons, and Professional Conduct presented in their November 12, 2014 Joint Case Management Statement, and only address open issues or issues still relevant to these litigations.

Motions

Defendants HP, Canon, Epson, and Newegg filed motions for judgment on the pleadings, which are set for hearing on June 18, 2015. (Doc. 302 in Case No. 4:14-cv-3640). Plaintiffs responded to the motions for judgment on the pleadings and filed a notice of supplemental authority, and the movants filed reply briefs. (Docs. 311, 312, 313 in Case No. 4:14-cv-3640). This is the only pending motion. Additionally, Defendants Seiko Epson Corp.; Epson America, Inc.; Canon Inc.; and Canon U.S.A., Inc. maintain that Plaintiffs' infringement contentions do not comply with this Court's Patent Local Rules, and the parties accordingly submitted a joint letter brief regarding this issue. This discovery dispute has been referred to Magistrate Judge Ryu, and a hearing is currently set before Judge Ryu for July 16, 2015.

Discovery

The parties exchanged discovery in the earlier ITC proceeding. The parties also have engaged in some discovery in these actions. Nevertheless, the parties anticipate additional

discovery on claims in the Plaintiffs' complaints and defenses and counterclaims in Defendants' answers and counterclaims.

a. The scope of anticipated discovery

Plaintiffs' Statement:

Depending on the resolution of the parties' disagreement regarding the use of representative products, Plaintiffs anticipate that additional discovery is needed on the design, functionality, and technical operation of the accused products in this case for which Defendants have yet to provide sufficient discovery. In addition, because Plaintiff TPL was not seeking damages in the ITC proceeding, discovery relevant to damages will be needed.

Defendants' Statement:

Defendants anticipate that additional discovery is needed regarding multiple issues, including the prior art, the invention date of the Asserted Patents, the prosecution of the Asserted Patents, and Plaintiffs' and their predecessors' licenses and licensing program.

b. Proposed limitations or modifications of the discovery rules

The parties agree as follows:

Method of Service: The parties agree to serve documents by email in lieu of personal service or service by U.S. Mail.

Disclosure of Discovery of Electronically Stored Information:

General Document Image Format. The parties agree to produce non-source code documents in single-page, Tagged Image File Format ("TIFF"). TIFF files shall be single page and shall be named with a unique production number followed by the appropriate file extension. Load files shall be provided to indicate the location and unitization of the TIFF files. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained

as they existed in the original document.¹

Native Files. A party that receives a document produced in a format specified above may make a reasonable request to receive the document in its native format, and upon receipt of such a request, the producing party shall produce the document in its native format.

Claims of Privilege: The parties agree that attorney-client privileged documents and work product documents (including electronically stored information) created after March 28, 2012 do not need to be logged.

Protective Order: The parties will meet and confer on a proposed Stipulated Protective Order to submit for the Court's approval.

c. Brief report on whether the parties have considered entering into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any discovery disputes

As noted above, Defendants Seiko Epson Corp.; Epson America, Inc.; Canon, Inc.; and Canon U.S.A., Inc. maintain that Plaintiffs' infringement contentions do not comply with this Court's Patent Local Rules, and the parties accordingly submitted a joint letter brief regarding this issue. This discovery dispute has been referred to Magistrate Judge Ryu, and a hearing is currently set before Judge Ryu for July 16, 2015.

The parties intend to work together regarding e-discovery or any issues related to Fed. R. Civ. P. 26(f) if any issues arise that are not governed by the agreements referenced above in Paragraph 2(b).

Settlement and ADR

Case Numbers 15-03642 (HiTi Digital America Inc.), 14-3645 (Kingston Technology Co., Inc.), and 14-3647 (Shuttle Computer Group Inc.) were dismissed. Today, Plaintiffs and

¹ The parties will follow the Court's guidance from the November 19, 2014 case management conference regarding the production of documents in text-searchable format.

1 Falcon Computer Systems, Inc. filed a joint stipulation to dismiss Case Number 14-03641.
2 Plaintiffs and the remaining Defendants, except Newegg and Rosewill, each participated in
3 separate mediation sessions with a Court-appointed mediator pursuant to the ADR Local Rules
4 of this Court. The parties believe that there are prospects for continuing settlement talks after the
5 June 18, 2015 hearing.

6 **Narrowing of Issues**

7 **Plaintiffs' Proposal:**

8 A resolution of the below two issues will significantly streamline these cases, narrow the
9 disputes, and save the Court and all parties time and resources.

10 **a. Representative Products**

11 Plaintiffs believe that issues in this case can be narrowed if Defendants will agree to, or
12 the Court orders, the use of representative products for purposes of determining infringement.
13 Defendants have admitted that all accused products "are essentially the same." (Doc. 302 at 6 in
14 Case No. 4:14-cv-3640). There are numerous accused products in the above-captioned actions
15 that—for purposes of infringement—function and are designed in substantially the same way.
16 For example, there are over one thousand HP products and over two-hundred and fifty Canon
17 products identified in Plaintiffs' infringement contentions. These numbers may increase after
18 Plaintiffs have an opportunity to take discovery on additional products that Plaintiffs have not yet
19 discovered.
20

21 Accordingly, an agreement for representative products for each Defendant will eliminate
22 the need for the parties to incur time and expense of a) serving discovery on the technical details
23 of numerous products, b) providing discovery on the technical details of numerous products, c)
24 making deponents available for depositions on topics related to the technical details of numerous
25 products, d) having experts submit expert reports on numerous products, e) submitting
26 dispositive motions related to the technical details of numerous products, and f) spending
27 unnecessary time presenting evidence on the technical details of numerous products to a jury.

b. Production of Documents in the Parties' Control

Plaintiffs believe that the parties should agree that they will produce relevant documents (including technical documents related to the accused products) that are in the parties' possession, custody, or control. At this time, Defendants are not producing technical documents with respect to all accused products due to various objections in response to Plaintiffs' requests for production including the argument that Plaintiffs' infringement contentions are deficient. However, Defendants have admitted that all products are "essentially the same" in their pending motion for judgment on the pleadings.

Defendants' Proposal:

a. Representative Products

Plaintiffs' proposal regarding an agreement on representative products is premature at this time because Plaintiffs have not yet put forth sufficient infringement contentions on the accused products. *Bender v. Maxim Integrated Prods.*, 2010 U.S. Dist. LEXIS 32115, *7-8 (N.D. Cal. March 22, 2010). As the Epson and Canon Defendants explained in their portion of the joint letter brief regarding Plaintiffs' infringement contentions, Defendants do not dispute that under this Court's Patent Local Rules and the cases interpreting those Rules, the use of representative products for purposes of infringement contentions may be appropriate *provided* that the plaintiff explains how and why the charted products are representative of other, non-charted products. Here, however, Plaintiffs have failed to do so, instead charting a handful of products and alleging that those charts are representative of thousands of products – including products using different controllers and connector assemblies, the only two components relevant to Plaintiffs' assertions in this case. Accordingly, Defendants cannot agree to any proposal regarding representative products unless and until Plaintiffs provide infringement contentions that satisfy the Patent Local Rules of this Court.

b. Document Production

Defendants have produced responsive documents in their possession, custody or control, and will continue to do so as required by the Federal Rules of Civil Procedure. To the extent that Plaintiffs' proposal above purports to extend or enlarge Defendants' obligations under the rules, including by purporting to require Defendants to produce documents in the possession of third parties, Defendants oppose it.

c. Early Motion for Summary Judgment of No Infringement

In view of the claim construction schedule in this case, Defendants believe an early motion for summary judgment of no infringement may also be appropriate depending on the Court's claim construction rulings. An early summary judgment motion may significantly streamline these cases, narrow the disputes, and save the Court and all parties time and resources, as it may eliminate the need for discovery and trial altogether.

Scheduling

Plaintiffs' Proposal:

Plaintiffs' proposed dates are based on: 1) the assumption that the parties agree to, or the Court orders, the use of representative products (see section 15.a. above), and 2) Defendants producing technical documents and information alleviating the need for Plaintiffs to undertake international discovery prolonging the time and expenses for all involved. If representative products are not used for purposes of infringement, Plaintiffs believe additional time will be needed for discovery.

Event	[Proposed] Deadline
Claim Construction Hearing/Further Case Management Conference	June 18, 2015
Deadline for parties to agree on the selection of representative products	July 30, 2015
Completion of Fact Discovery	December 2, 2015
Disclosure of opening expert witnesses and reports on issues for which party bears the burden	December 18, 2015

1	Disclosure of rebuttal expert witnesses and reports on issues for which opposing party bears the burden	January 29, 2016
2	Completion of Expert discovery	February 17, 2016
3	Case-Dispositive Motion Hearing Cut-off Date – governed by Judge Wilken’s Scheduling Notes and Standing Order re Motions for Summary Judgment	April 7, 2016
4	Final Pretrial Conference at 2:00 pm	May 11, 2016
5	A ___ day trial will begin at 8:30 am	May 16, 2016
6	Plaintiffs propose a 5 day trial for each Defendant.	
7	Defendants propose a 5 day trial for each Defendant	

Defendants’ Proposal:

As memorialized in the prior Case Management Statement, the parties previously agreed “to meet and confer on a schedule within seven (7) days of the Court’s initial claim construction order.” DI 256 at 21. Defendants continue to believe this is the appropriate approach to take in this case, and that entry of a full schedule at this time is premature.

Nevertheless, if this Court is inclined to enter a schedule, Defendants propose the following schedule which includes an option for an early motion for summary judgment of no infringement after the issuance of the Markman Order.

Event	[Proposed] Deadline
Claim Construction Hearing/Further Case Management Conference	June 18, 2015
Hearing with Magistrate Judge Ryu re Dispute regarding Plaintiffs’ Infringement Contentions	July 16, 2015
Deadline for Defendants to Seek Leave to File an Early Summary Judgment Motion Based Upon the Court’s Claim Construction Ruling	30 days after issuance of Markman Order
Completion of Fact Discovery	January 29, 2016
Disclosure of opening expert witnesses and reports on issues for which party bears the burden	February 19, 2016
Disclosure of rebuttal expert witnesses and reports on issues for which opposing party bears the burden	March 18, 2016
Completion of Expert discovery	April 8, 2016
Case-Dispositive Motion Hearing Cut-off Date (other than	June 3, 2016

early summary judgment motions permitted by the Court) – governed by Judge Wilken’s Scheduling Notes and Standing Order re Motions for Summary Judgment	
Final Pretrial Conference at 2:00 pm	June 23, 2016 or at the Court’s convenience
A ____ day trial will begin at 8:30 am	July 11, 2016 or at the Court’s convenience
The parties propose a 5 day trial for each Defendant.	

Markman Hearing Procedure

Subject to the Court’s preferences, the parties propose that they present the disputed terms in the following order, with each side presenting arguments on a term before moving on to the next term:

1. "Mapping" / "to map"
2. "Means for mapping"
3. "Means for identifying..."
4. "Contact pins integrated within..."
5. "Interconnection means"
6. "Memory media card"
7. "Type of memory media card"

Dated: June 11, 2015

Respectfully submitted,

/s/ Benjamin R. Askew

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22 Dated: June 11, 2015

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Dated: June 11, 2015

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served on counsel for all parties of record on June 11, 2015 via the Court's CM/ECF system.

/s/ Benjamin R. Askew

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

UNITED STATES DISTRICT/MAGISTRATE
JUDGE